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Via Facsimile and ECF

The Honorable Allyne R. Ross
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Glenn Marcus
Criminal Docket No. 05-0457 (ARR)

Dear Judge Ross:

The government respectfully submits this response on one issue raised in Glenn Marcus's April 27, 2007, reply to the government's opposition to his Rule 29 and Rule 33 motions.

In his reply, Marcus cites the Supreme Court's decision in United States v. Kozminski, 487 U.S. 931 (1988) in support of his argument that the forced labor and sex trafficking statutes, 18 U.S.C. §§ 1589 and 1591, respectively, applied in this case should be read narrowly. Marcus argues:

[T]he Supreme Court [in Kozminski] recognized that the broad definition of "involuntary servitude" applied by the district court brought within its ambit conduct which -- while not "innocent" -- went beyond the scope of conduct which the statute was designed to proscribe. The same is true in this case.

However, Marcus's reliance on Kozminski is misplaced. Congress passed the Trafficking Victims Protection Act ("TVPA"), which includes 18 U.S.C. §§ 1589 and 1591, to counteract the Supreme Court's narrow interpretation of the existing involuntary servitude statute in Kozminski. See 146 Cong. Rec. H8855-02, 2000 WL 1476449 at Sec. 102(b)(13) (noting Kozminski's narrow interpretation of the involuntary servitude statute as a reason

for the TVPA's passage); United States v. Bradley, 390 F.3d 145, 150 (1st Cir. 2004) ("section 1589 was intended expressly to counter [Kozminski]"); Zavala v. Wal-Mart Stores, Inc., 393 F. Supp.2d 295, 335 n. 31 (D.N.J. 2005) (noting that, in response to Kozminski, TVPA extended the reach of the servitude statutes to conduct that "amounts to psychological coercion"). As the court in Zavala explained, "the [TVPA] added 18 U.S.C. § 1589 to the involuntary servitude provisions, making it a crime for anyone to obtain the labor of another 'by means of any scheme . . . intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.'" 393 F.Supp.2d at 335 n. 31. In other words, the TVPA sought to expand the definition of coercion such that if a defendant created a "climate of fear," as the jury found here, that conduct could constitute a violation of Section 1589. Id. ("By reaching the intent to cause a particular subjective belief in the victim, section 1589 may be based on conduct that amounts to psychological coercion, a proposition that the [Supreme] Court had rejected in Kozminski."). Thus, Marcus's reliance on Kozminski for the proposition that Sections 1589 and 1591 should be read narrowly is misplaced, given that the case involved a different, pre-TVPA statute, 18 U.S.C. § 1584, and given that Congress enacted the TVPA, in part, to counteract the Supreme Court's narrow application of the earlier involuntary servitude statute and to expand the reach of the forced labor laws.

Respectfully submitted,

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Clerk of the Court (ARR) (via ECF)